Building Health-Centered Approaches towards Safe and Healthy Communities: Summary of Buprenorphine Decriminalization Bill

S699/A4013 (Rivera/L.Rosenthal)

New York State Is In Crisis

Since 2020, over 17,480[1] New Yorkers have died from a *preventable* overdose. New York broke another record with over 6,427[2] deaths in 2022 alone. Marginalized communities — low-income communities, unstably housed, older New Yorkers, and Black and Brown neighborhoods — have disproportionately higher rates of overdose. Overdose continues to take more New Yorkers' lives than car accidents, suicides, and homicides combined[3].

The Problem

Medication for Opioid Use Disorder (buprenorphine and methadone) is considered the gold standard for opioid use disorder treatment. Medication for Opioid Use Disorder (MOUD) increases patients' retention in treatment, improves social functioning, reduces the risks of transmission of hepatitis C and HIV, reduces engagement in the criminal-legal system, and reduces overdose deaths. Without consistent access to medication, people with opioid use disorder experience painful symptoms of withdrawal, and are at increased risk of overdose death.

Unfortunately, because of stigma, structural racism and economic disparities, people living with opioid use disorder experience significant barriers to accessing prescribed buprenorphine. Limited availability of buprenorphine at pharmacies[4], and uneven distribution of providers who will prescribe the medication[5] contribute to the difficult reality that only 15% of opioid use disorder patients[6] receive medication as part of their treatment. In addition, many people who need and want treatment often don't have consistent access to a provider, making prescribed buprenorphine even more difficult to obtain. These barriers are not experienced equally among people with opioid

[1] https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm

[2] https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm

[3] https://www.nyc.gov/assets/doh/downloads/pdf/basas/provisional-overdose-report-second-quarter-2022.pdf

[4] Kazerouni, Neda J., Adriane N. Irwin, Ximena A. Levander, Jonah Geddes, Kirbee Johnston, Carly J. Gostanian, Baylee S. Mayfield, Brandon T. Montgomery, Diana C. Graalum, and Daniel M. Hartung. 2021. "Pharmacy-Related Buprenorphine Access Barriers: An Audit of Pharmacies in Counties with a High Opioid Overdose Burden." Drug and Alcohol Dependence 224 (July): 108729. https://doi.org/10.1016/j.drugalcdep.2021.108729.

[5] Goedel, William C., Aaron Shapiro, Magdalena Cerdá, Jennifer W. Tsai, Scott E. Hadland, and Brandon D. L. Marshall. 2020. "Association of Racial/Ethnic Segregation With Treatment Capacity for Opioid Use Disorder in Counties in the United States." JAMA Network Open 3 (4): e203711. https://doi.org/10.1001/jamanetworkopen.2020.3711.

[6] Huhn AS, Hobelmann JG, Strickland JC, et al. Differences in Availability and Use of Medications for Opioid Use Disorder in Residential Treatment Settings in the United States. *JAMA Netw Open.* 2020;3(2):e1920843. doi:10.1001/jamanetworkopen.2019.20843

use disorder. Black patients are consistently less likely to be inducted and prescribed buprenorphine than white patients.[7]

These barriers to accessing prescribed buprenorphine combined with the risks of patients not receiving medication for opioid use disorder lead some people to obtain diverted buprenorphine. Diversion occurs when a prescription medicine is used by someone other than the patient.

Diverted medication - for example, giving extra cough medicine to a friend or allergy medication to a family member - is commonplace. However, because buprenorphine is a Schedule III drug, it is illegal to use without a prescription, and those found in possession of diverted buprenorphine or suspected of selling diverted prescriptions are at risk of arrest. Despite the risk of arrest, buprenorphine diversion occurs because people need access to this life-saving medication.

The criminalization of buprenorphine is part of a long history of ineffective War on Drugs policies that attempt to punish and stigmatize people who use drugs, instead of treating these issues as a health and structural one. Criminalization and incarceration jeopardize the health of people who use drugs, while also interrupting their access to opioid use disorder treatment and raising their risk for fatal overdose after release. Currently, more than 80% of people in the state's prisons and jails[8] facilities have a substance use disorder and overdose is the leading cause of death[9] for people with a substance use disorder who are released from jail or prison. Incarcerating people for possessing a lifesaving medication not only is harmful, but fatal. Further, a criminal record can compromise a person's ability to access a formal prescription to buprenorphine in the future.[10]

The Solution

S699/A4013 will remove buprenorphine from the New York State Schedule of Controlled Substances, a critical step in expanding access to life-saving treatment in New York State in the midst of a catastrophic overdose crisis.

Criminalizing buprenorphine directly undermines evidence-based public health strategies by putting people at risk of overdose and the harms of the criminal-legal system.

The majority of individuals who use non-prescribed buprenorphine use it for therapeutic use to prevent withdrawal symptoms, self-detox, to bridge gaps in treatment, maintain abstinence, or

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[7] Hansen, Helena, Carole Siegel, Joseph Wanderling, and Danae DiRocco. 2016. "Buprenorphine and Methadone Treatment for Opioid Dependence by Income, Ethnicity and Race of Neighborhoods in New York City." *Drug and Alcohol Dependence 164* (July): 14–21. https://doi.org/10.1016/j.drugalcdep.2016.03.028.

[8] "Department of Health." *Criminal Justice*, 31 Oct. 2019, www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/special_populations/amendment_app.htm#fn3.

[9] Binswanger, Ingrid A et al. "Release from prison--a high risk of death for former inmates." *The New England journal of medicine* vol. 356,2 (2007): 157-65. doi:10.1056/NEJMsa064115

[10] Messinger, John C., Anand Chukka, and J. Wesley Boyd. 2022. "Against Our Instincts: Decriminalization of Buprenorphine." *The Journal of the American Board of Family Medicine* 35 (2): 394–97. https://doi.org/10.3122/jabfm.2022.02.210308.

attempt to enter treatment that may otherwise be inaccessible.[11] Research[12] shows that even when taken without a prescription, people living with opioid use disorder experience the benefits of buprenorphine - increased retention in treatment, improved social functioning, reduced risks of transmission of hepatitis C and HIV, reduced engagement in the criminal-legal system, and reduced overdose deaths.

The benefits of decriminalizing buprenorphine are clear and the risks are very low. Buprenorphine is a partial opioid agonist. It is extremely difficult to overdose on this medication because when used alone, buprenorphine has a ceiling to respiratory depression, meaning that breathing is not interrupted, as opposed to full opioid agonists like heroin or fentanyl.

The evidence is clear: decriminalizing buprenorphine is risk reduction. In 2021, Vermont[13] decriminalized buprenorphine possession, following the Burlington Police Department's decision[14] to stop arresting people for buprenorphine possession— which helped contribute to the 50% decrease in overdose deaths[15] in Chittenden county.

Decriminalizing buprenorphine possession is a public health strategy to reduce overdose deaths, enroll more New Yorkers in treatment, reduce stigma, and keep communities safe.

[11] Kenney, Shannon R., Bradley J. Anderson, Genie L. Bailey, and Michael D. Stein. 2017. "The Relationship between Diversion-Related Attitudes and Sharing and Selling Buprenorphine." Journal of Substance Abuse Treatment 78 (July): 43–47. https://doi.org/10.1016/j.jsat.2017.04.017.
[12] Chilcoat, Howard D., Halle R. Amick, Molly R. Sherwood, and Kelly E. Dunn. 2019. "Buprenorphine in the United States: Motives for Abuse, Misuse, and Diversion." Journal of Substance Abuse Treatment 104 (September): 148–57. https://doi.org/10.1016/j.jsat.2019.07.005.
[13] "Vermont Decriminalizes Possession of Opioid Addiction Drug." *AP News*, AP News, 4 June 2021, apnews.com/article/vermont-opioids-health-0b9efd46f0eed0d765fc576a9d29139e.
[14] Hirschfeld, Peter. "Health Experts Push to Decriminalize Addiction Treatment Drug." *Vermont Public*, Vermont Public, 26 Mar. 2019, www.vermontpublic.org/vpr-news/2019-03-22/health-experts-push-to-decriminalize-addiction-treatment-drug#stream/0.
[15] "Mayor Miro Weinberger and Community Partners Announce 50 Percent Decline in Opioid-Related Overdose Fatalities in Chittenden County in 2018." *Mayor Miro Weinberger and Community Partners Announce 50 Percent Decline in Opioid-Related Overdose Fatalities in Chittenden County in 2018 | City of Burlington, Vermont*, 14 Feb. 2019, www.burlingtonvt.gov/Press/mayor-miro-weinberger-and-community-partners-announce-50-percent-decline-in-opioid-related.